RECEIVED
FEB 21 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1127

W.J. ESTELLE, JR., Director,
Texas Department of Corrections,

Petitioner,

v.

ERNEST BENJAMIN SMITH,

Respondent.

Respondent Ernest Benjamin Smith, by his undersigned counsel, asks leave to file the attached Brief in Opposition without prepayment of costs and to proceed in forma pauperis pursuant to Rule 53. Respondent's affidavit is attached hereto.

JOEL BERGER
Attorney for Respondent
Suite 2030
10 Columbus Circle
New York, New York 10019

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1127

W.J. ESTELLE, JR., Director,
Texas Department of Corrections,

Petitioner,

v.

ERNEST BENJAMIN SMITH,

Respondent.

I, ERNEST BENJAMIN SMITH, being duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees and to proceed in forma pauperis:

1. I am the respondent in the above-titled case.

2. Because of my poverty I am unable to pay the costs of said cause; I own no real or personal property; I am incarcerated and receive no income from earnings.

3. I am unable to give security for said cause.

4. Counsel was appointed to represent me at my trial in the 195th Judicial District Court of Dallas County, Texas, and on my appeal to the Texas Court of Criminal Appeals. In the instant federal habeas corpus proceeding I have been represented by volunteer counsel associated with the NAACP Legal Defense and Educational Fund, Inc.

5. I believe that I am entitled to the redress I seek in said cause, and thus far both a federal district judge and a unanimous panel of the Court of Appeals have agreed that I

am entitled to the redress I seek.

6. The nature of said cause is briefly stated as follows:

I was convicted in the 195th Judicial District Court of Dallas County, a trial court of the State of Texas, of capital murder, and was sentenced to die. I am being held under sentence of death at the Ellis Unit of the Texas Department of Corrections, Huntsville, Texas. My conviction and sentence were affirmed on February 18, 1976, rehearing denied July 14, 1976, by the Texas Court of Criminal Appeals. On March 7, 1977, this Court denied certiorari. 430 U.S. 922 (Justices Brennan, Marshall and White dissenting). However, on December 30, 1977, the United States District Court for the Northern District of Texas granted my federal habeas corpus petition to the extent of invalidating the sentence of death imposed upon me. 445 F.Supp. 647 (N.D. Tex. 1977); and on September 13, 1979, the United States Court of Appeals affirmed. 602 F.2d 694 (5th Cir. 1979). Both the district court and the court of appeals held that, due to errors committed during the course of my trial, the death sentence was imposed upon me in violation of my constitutional rights.

Ernest Benjamin Smith

ERNEST BENJAMIN SMITH

STATE OF TEXAS

COUNTY OF WALKER

The foregoing affidavit of Ernest Benjamin Smith was subscribed and sworn to before me this 3 day of February, 1980.

Notary Public

WALKER CO. TEXAS

MY COMMISSION EXPIRES 12-4-81

RECEIVED
FEB 21 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1979

No. 79-1127

W.J. ESTELLE, JR., Director,
Texas Department of Corrections,

Petitioner,

-v.-

ERNEST BENJAMIN SMITH,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

JOHN F. SIMMONS
Suite 1220
1412 Main Street
Dallas, Texas 75202

JACK GREENBERG
JAMES M. NABRIT, III
JOEL BERGER
JOHN CHARLES BOGER
DEBORAH FINS
Suite 2030
10 Columbus Circle
New York, New York 10019

ANTHONY G. AMSTERDAM
Stanford University Law School
Stanford, California 94305

ATTORNEYS FOR RESPONDENT

In The

Supreme Court of the United States

October Term, 1979

No. 79-1127

W.J. ESTELLE, JR., Director,
Texas Department of Corrections,

Petitioner,

-v.-

ERNEST BENJAMIN SMITH,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly affirmed the District Court's decision to grant habeas corpus relief based upon the affidavits submitted by both sides, since those affidavits did not reveal any material dispute of fact necessitating an evidentiary hearing.

2. Whether the particular circumstances surrounding Doctor Grigson's testimony at the penalty trial in this capital case deprived respondent of due process of law and resulted in the imposition of cruel and unusual punishment.

3. Whether the Fifth and Sixth Amendment rights recognized by the Court of Appeals within the context of the capital sentencing trial conducted in this case are inappropriate to the circumstances, in which the State had the burden of proving respondent's alleged probable future dangerousness

as the basis for a death sentence yet sought to meet that burden through respondent's own statements.

STATEMENT OF THE CASE

Petitioner's Statement of the Case describes its procedural history in the Texas courts and the courts below. The facts of the case are adequately set forth in the opinion of the Court of Appeals, appended to the certiorari petition, at A. 2-7, 9-13, 15-17, 18 and 23.

REASONS FOR DENYING THE WRIT

I

THE COURT OF APPEALS CORRECTLY AFFIRMED THE DISTRICT COURT'S DECISION TO GRANT HABEAS CORPUS RELIEF BASED UPON THE AFFIDAVITS SUBMITTED BY BOTH SIDES, BECAUSE THOSE AFFIDAVITS DID NOT REVEAL ANY MATERIAL DISPUTE OF FACT NECESSITATING AN EVIDENTIARY HEARING

A district court is not required to conduct an evidentiary hearing in every habeas corpus proceeding. The court may order the submission of affidavits by both sides as a means of narrowing the issues, to determine whether a hearing is necessary. 28 U.S.C. §2246 (1970); Rules Governing Section 2254 Cases in the United States District Courts, Rule 7; Wright, Procedure for Habeas Corpus, 77 F.R.D. 227, 244-45 (1978); see also Harris v. Nelson, 394 U.S. 286, 299 (1969). If the affidavits reveal no material disputes of fact, the court may rule as a matter of law without hearing live testimony. Blackledge v. Allison, 431 U.S. 63, 80-81 (1977); Browder v. Director, Illinois Department of Corrections, 434 U.S. 257, 266 n.10 (1978); Walker v. Johnston, 312 U.S. 275, 284 (1941).

The affidavits submitted by both sides in this case at the district court's request are in complete agreement that:

(i) respondent's trial attorneys never raised any question of respondent's competence to stand trial or his sanity, R. 84, 87, 89, 92;[1] (ii) the trial judge nonetheless asked Dr. Grigson to visit respondent for the sole purpose of satisfying the judge personally that respondent was competent to stand trial, R. 84, 87, 90, 91; (iii) the trial judge's request was made by oral communication, and no order or letter was written reflecting Dr. Grigson's appointment, R. 84, 86, 89, 92;[2] (iv) Dr. Grigson did not prepare any report of his findings, R. 85, 87, 90, 92; and (v) Dr. Grigson's letter to the trial judge summarizing his findings was not served upon defense counsel, but was merely placed in the court file by the judge, R. 84-85, 86-87, 90, 92.

One of respondent's attorneys additionally averred that "[u]ntil the time that Dr. Grigson took the stand nothing had been done or said that ever gave me any reason to believe that Dr. Grigson would be called to testify, or that there was anything material or relevant that he could testify to." R. 87. "His appearance at the trial was a complete surprise to me." R. 94. These statements were not disputed by the state's affidavit. Dr. Grigson's testimony at trial reveals that the prosecutor discussed the doctor's findings with him in advance of trial, App. 120,[3] asked him to testify, App. 122-23, and -- at least five days before the trial -- told Dr. Grigson

---

1/ Numbers preceded by "R." refer to pages of the record before the Court of Appeals.

2/ As the Court of Appeals noted, whether or not the trial judge informally told defense counsel of the doctor's appointment is immaterial. See opinion of the Court of Appeals, certiorari petition at A. 9 n. 5 & n. 6.

3/ Numbers preceded by "App." refer to pages of the Appendix before the Court of Appeals.

approximately when he would be needed, App. 121, 122; yet at no time did the prosecutor amend his court-ordered witness list to advise defense counsel of his intentions. Thus, the undisputed facts fully support the conclusion of the courts below that the prosecutor deliberately used Dr. Grigson as a last-minute surprise witness. See opinion of the Court of Appeals, certiorari petition at A. 16-17.

II

THE PARTICULAR CIRCUMSTANCES SURROUNDING DOCTOR GRIGSON'S TESTIMONY AT THE PENALTY TRIAL IN THIS CAPITAL CASE DEPRIVED RESPONDENT OF DUE PROCESS OF LAW AND RESULTED IN THE IMPOSITION OF CRUEL AND UNUSUAL PUNISHMENT

The Court of Appeals announced no new principle of Eighth or Fourteenth Amendment law in this case, but merely applied Gardner v. Florida, 430 U.S. 349 (1977), to invalidate a death sentence obtained through prosecutorial misconduct that deprived respondent of fair notice and an opportunity to defend:

> The defect which the Supreme Court identified in Gardner -- defense counsel's inability to challenge or answer the evidence on which the death sentence was based ... -- is conspicuous here as well. As a result Smith's sentencing hearing was at least as unreliable as the proceedings in Gardner. And the justifications for the unreliable procedures were far weaker here.

Opinion of the Court of Appeals, certiorari petition at A. 8-9.

Dr. Grigson's opinions at the penalty trial provided the principal basis for the death sentence imposed upon respondent. "Even a moderately well prepared defense attorney would have had some success in impeaching Dr. Grigson's testimony or offering an opposing view." Opinion of the Court of Appeals, certiorari petition at A. 11 n. 7. However, the prosecutor's surprise tactics, by effectively foreclosing any

scrutiny or rebuttal of Dr. Grigson's presentation, prevented respondent from "challeng[ing] the accuracy or materiality" of the State's evidence at the penalty phase. Gardner v. Florida, supra, 430 U.S. at 356.

Petitioner does not claim that prosecutors in Texas regularly engage in the practice of surprising the defense with last-minute expert witnesses at capital trials. Nor does petitioner cite to any conflicting decisions in which the states or other circuits have upheld death sentences obtained by this tactic. The Court of Appeals' application of Gardner to remedy an isolated instance of prosecutorial contrivance plainly does not merit review by this Court.

III

THE FIFTH AND SIXTH AMENDMENT RIGHTS RECOGNIZED BY THE COURT OF APPEALS WITHIN THE CONTEXT OF THE CAPITAL SENTENCING TRIAL CONDUCTED IN THIS CASE ARE APPROPRIATE TO THE CIRCUMSTANCES, IN WHICH THE STATE HAD THE BURDEN OF PROVING RESPONDENT'S ALLEGED PROBABLE FUTURE DANGEROUSNESS AS THE BASIS FOR A DEATH SENTENCE YET SOUGHT TO MEET THAT BURDEN THROUGH RESPONDENT'S OWN STATEMENTS

This case has nothing to do with the application of the Fifth and Sixth Amendments to psychiatric examinations performed in the context of inquiries into (i) competency to stand trial, (ii) criminal responsibility where the defense of insanity has been raised, or (iii) civil commitment. All of the cases cited by petitioner at page 7 of the certiorari petition arose in such contexts. The Fifth Circuit agrees with those decisions, see United States v. Cohen, 530 F.2d 43 (5th Cir. 1976), which the court below properly held inapplicable to the circumstances of the present case. See opinion of the Court of Appeals, certiorari petition at A. 20-22.

Here, in the context of Texas' unusual capital sentencing procedure -- which authorizes a death sentence if but only if

the prosecution proves the defendant's probable future dangerousness -- respondent was visited shortly before his trial by Dr. James P. Grigson. Dr. Grigson, a Dallas psychiatrist who regularly testifies for the State in criminal prosecutions,[4/] spoke with respondent for about ninety minutes. And during that interview, respondent unknowingly provided the prosecution with the basis for the only testimony offered against him at his subsequent penalty trial. Respondent was not advised that the interview could have any adversarial purpose, that his comments to the doctor could and would be used to take his life, or that, in view of this awesome consequence, he had a right not to speak to the doctor.

The Court of Appeals properly held that under these particular circumstances, Mr. Smith's Fifth and Sixth Amendment rights were violated. In light of the use to which it was put, Dr. Grigson's interview was no routine competency examination, having only the benign and neutral purpose of insuring that a criminal defendant understands the charges and is capable of assisting in his defense. Nor was it a routine sanity examination, occasioned by a defendant's plea of insanity -- a very different situation, in which the defendant's silence might deprive the State of the only effective means of meeting an issue which the defendant himself has interjected into the case.[5/] Here, the State -- not respondent -- raised the issue of respondent's alleged future dangerousness. Under Texas law, the State had the burden of proving such dangerousness beyond a reasonable doubt in order to obtain

---

4/ See opinion of the Court of Appeals, certiorari petition at A. 12-13 n.7.

5/ The court below noted that if the defendant affirmatively seeks to offer psychiatric testimony at the penalty phase, he may well be deemed to have waived his privilege and be required to submit to an examination by the prosecutor's psychiatrist. See opinion of the Court of Appeals, certiorari petition at A. 21 & n. 15, A. 26.

a death sentence.[6] And the State sought to meet that burden exclusively through the defendant's own statements, unwittingly made without the slightest awareness that he would be assisting the prosecution's efforts to take his life.

The abuse of psychiatric testimony revealed by this record is so fundamentally unfair that the Texas Legislature has taken steps to remedy the problem. In H.B. No. 1163, effective August 27, 1979, the Legislature enacted Tex. Civ. Stat. art. 5561 h, which provides in pertinent part as follows:

> Sec. 2. (a) Communication between a patient/client and a professional is confidential and shall not be disclosed except as provided in Section 4 of this act.
>
> * * *
>
> Sec. 4. (a) Exceptions to the privilege in court proceedings exist:
>
> (4) when the judges [sic] finds that the patient/client after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's/client's mental or emotional condition or disorder....

1979 Vernon's Texas Session Law Service ch. 239, pp. 512-15 (emphasis added).[7] This statute, while not necessarily a complete corrective, will certainly inhibit the sort of exploitative practice that occurred here by placing defendants on notice that their statements to a court-appointed psychiatrist may be used against them. Supervening state legislation has therefore substantially reduced the significance of the decision below in the only jurisdiction to which it applies,

---

6/ Texas Code Crim. Pro. Art. 37.071(c).

7/ The complete text of the statute is annexed hereto as Appendix A.

and has rendered the exercise of this Court's certiorari jurisdiction especially inappropriate. See Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70 (1955).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Joel Berger

JOHN F. SIMMONS
Suite 1220
1412 Main Street
Dallas, Texas 75202

JACK GREENBERG
JAMES M. NABRIT, III
JOEL BERGER
JOHN CHARLES BOGER
DEBORAH FINS
Suite 2030
10 Columbus Circle
New York, New York 10019

ANTHONY G. AMSTERDAM
Stanford University Law School
Stanford, California 94305

APPENDIX A

the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or reasonably believed by the patient/client so to be.

(b) "Patient/Client" means any person who consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and other drug addiction.

Confidentiality of information

Sec. 2. (a) Communication between a patient/client and a professional is confidential and shall not be disclosed except as provided in Section 4 of this Act.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient/client which are created or maintained by a professional are confidential and shall not be disclosed except as provided in Section 4 of this Act. Nothing in this section shall prohibit the disclosure of information necessary in the collection of fees for mental or emotional health services, as provided by Subsection (b)(5) of Section 4 of this Act.

(c) Any person who receives information from confidential communications or records as defined by Section 2, other than the persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's client's behalf, shall not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this Act continue to apply to confidential communications or records concerning any patient/client irrespective of when the patient/client received services of a professional.

Privilege of confidentiality

Sec. 3. (a) The privilege of confidentiality may be claimed by the patient/client or by other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf.

(b) The professional may claim the privilege of confidentiality but only on behalf of the patient/client. The authority to do so is presumed in the absence of evidence to the contrary.

Exceptions to the privilege of confidentiality

Sec. 4. (a) Exceptions to the privilege in court proceedings exist:

(1) when the proceedings are brought by the patient/client against a professional, including but not limited to malpractice proceedings, and in any criminal or license revocation proceedings in which the patient/client is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(2) when the patient/client waives his right in writing to the privilege of confidentiality of any information, or when other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf submit a written waiver to the confidentiality privilege;

(3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the patient/client; or

(4) when the judges finds that the patient/client after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered

examination relating to the patient's/client's mental or emotional condition or disorder, providing that such communications shall not be privileged only with respect to issues involving the patient's/client's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(b) Exceptions to the privilege of confidentiality, in other than court proceedings, allowing disclosure of confidential information by a professional, exist only to the following:

(1) to governmental agencies where such disclosures are required or authorized by law;

(2) to medical or law enforcement personnel where the professional determines that there is a probability of imminent physical injury by the patient/client to himself or to others, or where there is a probability of immediate mental or emotional injury to the patient/client;

(3) to qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but such personnel may not identify, directly or indirectly, a patient/client in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(4) to any person bearing the written consent of the patient/client, or a parent if the patient/client is a minor, or a guardian if the patient/client has been adjudicated incompetent to manage his personal affairs, or to the patient's/client's personal representative if the patient/client is deceased;

(5) to individuals, corporations, or governmental agencies involved in the payment or collection of fees for mental or emotional health services performed by a professional as defined in Section 1 of this Act; or

(6) to other professionals and personnel under the direction of the professional who are participating in the diagnosis, evaluation, or treatment of the patient/client.

Legal remedies

Sec. 5. A person aggrieved by a violation of this Act may petition the district court of the county in which the person resides, or in the case of a nonresident of the state, the district court of Travis County, for appropriate injunctive relief, and the petition takes precedence over all civil matters on the docket of the court except those matters to which equal precedence on the docket is granted by law. A person aggrieved by a violation of this Act may prove a cause of action for civil damages.

Severability clause

Sec. 6. If any portion of this Act is declared invalid or unconstitutional, it is the intention of the legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable.

Emergency clause

Sec. 7. The importance of this legislation and the crowded conditions of the calendars in both houses create an emergency and an imperative public necessary that the constitutional rule requiring bills to he read on three several days in each house be suspended, and this rule is hereby sus-

pended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 25, 1979, by a non-record vote; House concurred in Senate amendments to H. B. No. 1163 on May 9, 1979, by a non-record vote; passed by the Senate, with amendments, on May 7, 1979: Yeas 31, Nays 0.

Approved May 17, 1979.

Effective Aug. 27, 1979, 90 days after date of adjournment.

WEIGHTS AND MEASURES—TESTS—FEES

CHAPTER 240

H. B. No. 1381

An Act relating to fees for testing instruments used in weighing and measuring.

Be it enacted by the Legislature of the State of Texas:

Section 1. Article 5728, Revised Civil Statutes of Texas, 1925, as amended, is amended [55] to read as follows:

Art. 5728. Fees; failure or refusal to pay; repairs; testing services; penalty

(a) The Commissioner of Agriculture shall collect fees for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring whenever he is required to make such tests under the provisions of this Chapter. The fee for testing gasoline, kerosene and diesel fuel pumps not to exceed Two Dollars ($2) for each pump tested; the test certificate or seal shall be attached to each gasoline, kerosene and diesel fuel pump; fee for testing scales up to nine hundred and ninety-nine (999) pounds not to exceed Two Dollars ($2) for each scale tested; fee for testing scales one thousand (1,000) pounds to four thousand nine hundred and ninety-nine (4,999) pounds not to exceed Five Dollars ($5) for each scale tested; fee for testing scales four thousand nine hundred and ninety-nine (4,999) pounds and over not to exceed Twenty Dollars ($20) for each scale tested. The fee for testing butane and propane metering devices not to exceed Twenty Dollars ($20) for each metering device tested. The fee for testing other metering devices with a delivery capacity of less than fifty (50) gallons per minute is Two Dollars ($2) for each metering device tested; the fee for testing those with a delivery capacity of fifty (50) gallons or more per minute but less than one hundred (100) gallons per minute is Five Dollars ($5) for each metering device tested; and the fee for testing those with a delivery capacity of one hundred (100) or more gallons per minute is Ten Dollars ($10) for each metering device tested. The fee for testing measuring devices located on raw milk storage tanks situated on farms up to four hundred (400) gallons not to exceed Ten Dollars ($10) for each tank tested; fee for testing measuring devices located on raw milk storage tanks situated on farms four hundred and one (401) gallons to six hundred (600) gallons not to exceed Fifteen Dollars ($15) for each tank tested; fee for testing mea-

55. Vernon's Ann.Civ.St. art. 5728.

RECEIVED
FEB 21 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1979

No. 79-1127

W.J. ESTELLE, JR., Director,
Texas Department of Corrections,

Petitioner,

-v.-

ERNEST BENJAMIN SMITH,

Respondent.

On Writ of Certiorari To The United States
Court of Appeals for the Fifth Circuit

CERTIFICATE OF SERVICE

I, JOEL BERGER, hereby certify that I am a member of the bar of the Supreme Court of the United States and that I have served copies of (i) respondent's brief in opposition and (ii) respondent's application for permission to proceed in forma pauperis in the above case upon counsel for petitioner by depositing the same in the United States mail, first class mail, postage prepaid, addressed as follows:

Hon. Mark White
Attorney General of the
State of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711
Att: Anita Ashton, Esq.
Assistant Attorney General

All parties required to be served have been served. Done this 20th day of February, 1980.

JOEL BERGER
Attorney for Respondent
Suite 2030
10 Columbus Circle
New York, New York 10019

LEGISLATORS—INSURANCE COVERAGE—STATE PLAN

CHAPTER 238

H. B. No. 993

An Act relating to coverage of certain persons under the state employee insurance plan.

Be it enacted by the Legislature of the State of Texas:

Section 1. Section 13, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50—2, Vernon's Texas Insurance Code), is amended by adding [53] Subsection (d) to read as follows:

(d) On application to the trustee and on arrangement for payment of premiums, and postage, a person who has at least eight years creditable legislative service, as defined in Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), on ending his or her service in the legislature, continues to be eligible for participation in the group insurance programs under this Act.

Sec. 2. The importance of this legislation and the crowded conditions of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 12, 1979: Yeas 99, Nays 31, 1 present, not voting; passed by the Senate on May 7, 1979: Yeas 31, Nays 0.

Approved May 17, 1979.

Effective Aug. 27, 1979, 90 days after date of adjournment.

MENTAL HEALTH—CONFIDENTIALITY OF INFORMATION—PROFESSIONAL CONSULTATION

CHAPTER 239 [54]

H. B. No. 1163

An Act relating to the confidentiality of certain information pertaining to the mental or emotional health of an individual; providing for injunctive relief and civil damages; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Definitions of this Act

Section 1. (a) "Professional" means any person authorized to practice medicine in any state or nation, or any person licensed or certified by

53. V.A.T.S. Insurance Code, art. 3.50—2, § 13, subsec. (d).

54. Vernon's Ann.Civ.St. art. 5561h, §§ 1 to 4.